

CLERK OF UNITED STATES DISTRICT COURT
AT CHARLOTTESVILLE, VA
FILED

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

NOV 18 2003

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EARL WASHINGTON, JR.,

Plaintiff,

v.

KENNETH H. BURAKER, et al.,

Defendants.

unsealed by order of
SEALED Court 3-5-04

Civil Action No. 3:02 CV 106
District Judge Norman K. Moon

B. Waugh Crigler,
U.S. Magistrate Judge

TO BE FILED UNDER SEAL

**DEFENDANTS DENNY M. SLANE'S AND CURTIS TODD WILMORE'S
RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR RELEASE OF
FORENSIC EVIDENCE**

Denny M. Slane and Curtis Todd Wilmore, personal representative of the Estate of Curtis Reese Wilmore, ("Defendants"), by counsel, submit this Response in Opposition to Plaintiff's Motion, filed under seal, for Court-Ordered Subpoena for the Release of Forensic Evidence:

Using DNA testing technology that was unavailable at the time of his criminal trial, Plaintiff wishes to test forensic evidence gathered during the investigation into the rape and murder of Rebecca Williams. Plaintiff seeks to conduct these tests in order to establish his actual innocence, proof of which, he erroneously claims, is "essential to Mr. Washington's § 1983 case." See Plaintiff's Brief in Support, at 3 (filed Nov. 7, 2003). Plaintiff's requested testing, however, is irrelevant in this case.

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Regardless of a criminal defendant's actual guilt or innocence, he is entitled to certain constitutional rights that may be protected, in appropriate circumstances, through a § 1983 civil suit. See, e.g., Robles v. Prince George's County, 302 F.3d 262, 268-69 (4th Cir. 2002) (legally valid arrest does not bar civil rights claim). Modern-day DNA testing and analysis, therefore, is irrelevant to Plaintiff's claims, which focus on what happened from June 4, 1982, when Rebecca Lynn Williams was raped and murdered, to January 20, 1984, when a Virginia jury found Earl Washington, Jr. guilty of those crimes. See Plaintiff's Amended Complaint, ¶¶ 21, 48 (filed October 2, 2003).

Plaintiff alleges that during this nineteen-month period, "Defendants knew or shown have known that MR. WASHINGTON had no involvement in the rape and murder of Rebecca Lynn Williams." Plaintiff's Amended Complaint, ¶ 102; see also Plaintiff's Amended Complaint, ¶¶ 30, 31, 33, 80, 87. The DNA evidence that Plaintiff proposes to develop today, using scientific methods that were not in existence two decades ago, would provide no insight into what should have been known in 1983, when more primitive DNA testing technologies were in use. To the contrary, Plaintiff's presentation at trial of forensic evidence tested using current DNA technology would serve only to confuse the jury and unduly prejudice Defendants.

Moreover, Defendants are prepared to stipulate to the fact, as stated by Governor Gilmore in his 2000 Pardon of Earl Washington's sentence, that "a jury afforded the benefit of the DNA evidence and analysis available [in October of 2000] would have reached a different conclusion regarding the guilt of Earl Washington" than was reached in 1984. See Pardon of Earl Washington (attached as Exhibit A); Statement of Governor Jim Gilmore Regarding the Pardon of Earl Washington (attached as Exhibit B); Proposed


Stipulation of Fact Regarding DNA Evidence¹ (attached as Exhibit C). Thus, to the extent this Court finds testing and analysis using current technology to be relevant, a position with which Defendants respectfully disagree, Defendants' Proposed Stipulation renders as moot the need for such testing.

Accordingly, Defendants Slane and Wilmore respectfully request this Court deny Plaintiff's Motion for Court-Ordered Subpoena for the Release of Forensic Evidence.

¹ The attached Proposed Stipulation includes language to which Defendants are prepared to stipulate. Defendants would consider other language for inclusion in the Stipulation.

Respectfully submitted,

DENNY M. SLANE & CURTIS TODD WILMORE


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Certificate of Service

I certify that on November 18TH, 2003, a true copy of the foregoing was mailed,

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